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SEP 26 2008

In re Patent No. 7,223,741	:	
KRIEG, ARTHUR M.	:	DECISION ON REQUEST FOR
Issue Date: May 29, 2007	:	RECONSIDERATION OF PATENT
Application No. 10/619,279	:	TERM ADJUSTMENT and
Filed: July 14, 2003	:	NOTICE OF INTENT TO ISSUE
Docket No. C1039.70077US00	:	CERTIFICATE OF CORRECTION

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR §1.705" filed August 2, 2007 (certificate of mailing dated Monday, July 30, 2007). Patentee requests that the Patent Term Adjustment indicated in the patent be corrected from 411 days to either 525 days or 503 days.

The request for reconsideration of the patent term adjustment indicated in the patent is **GRANTED to the extent indicated herein.**

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **467 days**.

On May 29, 2007, the above-identified application matured into U.S. Patent No. 7,223,741. The instant request for reconsideration was timely filed on August 2, 2007 (certificate of mailing dated Monday, July 30, 2007), within two (2) months of the date the patent issued. See 37 CFR 1.705(d). The patent issued with a revised Patent Term Adjustment of 411 days. Patentee states that the patent is not subject to a terminal disclaimer.

Patentee disputes the reduction of 8 days associated with the filing of a "Miscellaneous Incoming Letter" received in the USPTO on February 5, 2007. Patentee asserts that the paper was an Interview Summary at the Examiner's request, and thus, no reduction is warranted.

A review of the application record confirms that the reduction of 8 days was based on the filing of the Interview Summary. Such a paper is not identified as one of the papers the filing of which the Director has specifically deemed not be a "failure to engage in reasonable efforts" within the meaning of 37 CFR 1.704(c)(10). Nonetheless, under the circumstances of this case, it is concluded that the filing of the Interview Summary is not a failure to engage within the meaning of 37 CFR 1.704(c)(10). Thus, the reduction of 8 days is not warranted and is being removed.

Patentee further disputes the reduction of 48 days associated with the filing of a Request for Foreign Priority on February 13, 2007. Patentee asserts that applicant did not file a Request for Foreign Priority or any other paper in the USPTO on February 13, 2007. Patentee avers that the entry in PAIR of the Request for Foreign Priority was an error on the part of the USPTO.

A review of the PALM calculations reveals that the patent term adjustment was reduced by 48 days for the submission of a Request for Foreign Priority after the mailing of the notice of allowance. See 37 CFR 1.704(c)(10). However, a review of the application record supports a conclusion that no Request for Foreign Priority or other paper was filed on February 13, 2007. Therefore, the reduction of 48 days of patent term adjustment is not warranted and is being removed.

Lastly, patentee argues that the patent term should not have been reduced by 58 days for the submission of drawings in response to the Notice to File Corrected Application Papers because the copies of the drawings were of record in the parent application. Patentee asserts that if a reduction were proper for filing drawings after the notice of allowance, the period of reduction should be no more than 22 days.

Specifically, patentee argues that the entry "Dispatch to FDC" in PAIR on April 23, 2007, serves as "the mailing date of the Office action or notice in response to the amendment or such other paper" under 37 CFR 1.704(c)(10). Patentee contends that any reduction for the submission of the corrected drawings should be no more than 22 days for the period between the date of receipt of the drawings on April 2, 2007, and the indication in PAIR that the application was dispatched to Final Data Capture on April 23, 2007.

As to the reduction of 58 days, the entry has been reviewed and found to be correct. Patentee acknowledges submitting corrected drawings after the mailing of the notice of allowance. Patentee is advised that the filing of drawings after the mailing of a notice of allowance is a proper basis for reduction of patent term adjustment. 37 CFR § 1.704(c)(10) provides that:

Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

(i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper;

or

(ii) Four months;

By Notice entitled *Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance*, 1247 OG 111 (June 26, 2001), the Director set forth examples of papers deemed not to cause substantial interference and delay in the patent issue process. The submission of formal drawings was not identified. Other than those papers identified in the Notice or MPEP, all papers filed after allowance of an application substantially delay the Office's ability to process an application for a patent because the Office does not wait until payment of the Issue Fee to begin the patent issue process. As a result, 37 CFR 1.704(c)(10) does

not distinguish between papers that are and are not required by the Office. Filing of any drawings after allowance will be treated as a failure to engage in reasonable efforts to conclude prosecution.

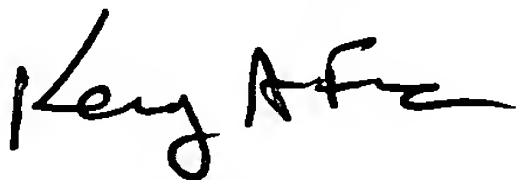
Furthermore, patentee's argument that the entry "Dispatch to FDC" in PAIR on April 23, 2007, serves as "the mailing date of the Office action or notice in response to the amendment or such other paper" under 37 CFR 1.704(c)(10) is without merit. The Office reminds patentee that "[t]he action of the Patent and Trademark Office will be based exclusively on the written record in the Office." 37 CFR 1.2. Moreover, it is clear from the language of 37 CFR 1.704(c)(10) that the period for reduction will end on the mailing date of an Office action or the mailing date of a Notice in response to the paper. Therefore, the Office properly reduced the period of adjustment by 58 days, the lesser period of the number of days beginning on the date the drawings were filed, April 2, 2007, and ending on the date the patent issued, May 29, 2007.

In view thereof, the patent term adjustment indicated on the patent should be **467 days** (580 days of Office delay - 113 days (55 + 58) of applicant delay).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by 467 days.

Telephone inquiries specific to this matter should be directed to Christina Tartera Donnell, Senior Petitions Attorney, at (571) 272-3211.



Kery A. Fries
Senior Legal Advisor
Office of Patent Legal Administration

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,223,741 B2

DATED : May 29, 2007

INVENTOR(S) : Krieg

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (411) days

Delete the phrase "by 411 days" and insert -- by 467 days--

Day : Friday
Date: 9/26/2008**PALM INTRANET**

Time: 09:34:28

PTA Calculations for Application: 10/619279

Application Filing Date:	07/14/2003	PTO Delay (PTO):	580
Issue Date of Patent:	05/29/2007	Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	169
Post-Issue Petitions:	0	Total PTA (days):	467
PTO Delay Adjustment:	56		

File Contents History

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79	09/26/2008	ADJUSTMENT OF PTA CALCULATION BY PTO	56		
73.5	05/09/2007	PTA 36 MONTHS			
73	05/29/2007	PATENT ISSUE DATE USED IN PTA CALCULATION			
72	04/24/2007	EXPORT TO FINAL DATA CAPTURE			
71	04/23/2007	DISPATCH TO FDC			
70	04/18/2007	FINISHED INITIAL DATA CAPTURE			
69	04/02/2007	WORKFLOW - DRAWINGS FINISHED		58	
68	04/16/2007	MAIL-PETITION DECISION - DISMISSED			
67	04/03/2007	WORKFLOW - QUERY REQUEST - FINISH			
66	03/19/2007	MISCELLANEOUS COMMUNICATION TO APPLICANT - NO ACTION COUNT			
65	03/08/2007	WORKFLOW - QUERY REQUEST - BEGIN			
64	03/02/2007	APPLICATION IS CONSIDERED READY FOR ISSUE			
63	02/26/2007	PETITION ENTERED			
62	02/09/2007	ISSUE FEE PAYMENT VERIFIED			
61	02/23/2007	ISSUE FEE PAYMENT RECEIVED			
60	02/05/2007	MISCELLANEOUS INCOMING LETTER		8	
59	02/13/2007	ACKNOWLEDGEMENT OF PRIORITY PAPERS			
58	02/13/2007	REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED)		48	
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56	01/29/2007	EXPORT TO INITIAL DATA CAPTURE			
55	01/24/2007	MAIL NOTICE OF ALLOWANCE			
54	01/24/2007	MAIL EXAMINER'S AMENDMENT			
53	01/24/2007	MAIL EXAMINER INTERVIEW SUMMARY (PTOL			

		- 413)			
52	01/03/2007	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
51	01/12/2007	EXAMINER'S AMENDMENT COMMUNICATION			
50	01/12/2007	ISSUE REVISION COMPLETED			
49	01/12/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
48	01/06/2007	NOTICE OF ALLOWABILITY			
47	10/10/2006	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
46	10/19/2006	OATH OR DECLARATION FILED (INCLUDING SUPPLEMENTAL)			
45	10/27/2006	DATE FORWARDED TO EXAMINER			
44	10/19/2006	RESPONSE AFTER NON-FINAL ACTION			
43	10/10/2006	REFERENCE CAPTURE ON IDS			
42	10/10/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
41	10/18/2006	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
40	10/13/2006	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
39	09/21/2006	MAIL NON-FINAL REJECTION	12		31
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37	01/08/2004	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
36	07/12/2006	DATE FORWARDED TO EXAMINER			
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33	01/08/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
32	05/15/2006	DATE FORWARDED TO EXAMINER			
31	05/09/2006	RESPONSE TO ELECTION / RESTRICTION FILED			
30	04/05/2006	MAIL RESTRICTION REQUIREMENT	568		-1
29	03/20/2006	CASE DOCKETED TO EXAMINER IN GAU			
28	03/20/2006	REQUIREMENT FOR RESTRICTION / ELECTION			
27	03/20/2006	CASE DOCKETED TO EXAMINER IN GAU			
26	06/28/2005	CASE DOCKETED TO EXAMINER IN GAU			
25	01/09/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
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23	02/17/2004	REFERENCE CAPTURE ON IDS			
22	02/13/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
21	07/14/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
20	11/12/2003	PRELIMINARY AMENDMENT			
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18	01/08/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
17	01/30/2004	APPLICATION IS NOW COMPLETE			
16	01/29/2004	APPLICATION RETURN FROM OIPE			
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14	01/29/2004	APPLICATION DISPATCHED FROM OIPE			
13	01/29/2004	APPLICATION IS NOW COMPLETE			
12	10/31/2003	PAYMENT OF ADDITIONAL FILING FEE/PREEXAM			
11	10/31/2003	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
10	10/20/2003	NOTICE MAILED--APPLICATION INCOMPLETE--FILING DATE ASSIGNED			
6	10/07/2003	CASE CLASSIFIED BY OIPE			
5	10/07/2003	CLEARED BY OIPE CSR			
4	08/15/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
3	07/30/2003	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
2	07/14/2003	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
1	07/14/2003	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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